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December 11, 2002

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

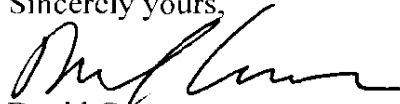
Re: Petition for Order Declaring Mid-Rivers Telephone
Cooperative, Inc. an Incumbent Local Exchange
Carrier in Terry, MT, **WC** Doc. No. 02-78
Ex Parte Presentation

Dear Ms. Dortch:

On December 10, 2002 Gerry Anderson and I, representing Mid-Rivers Telephone Cooperative, met with Ian Dillner, Paul Garnett, Nese Guendelsberger, and Ann Stevens of the Wireline Competition Bureau to discuss Mid-Rivers' pending petition. In the course of the discussions, the attached paper was used to explain Mid-River's position on the issues raised by parties in this proceeding.

Please contact me if there are any questions in regard to this matter. An original and one copy are provided pursuant to Section 1.1206(b) of the Commission's rules.

Sincerely yours,



David Cosson

Attachment

cc: Ian Dillner
Paul Garnett
Nese Guendelsberger
Ann Stevens

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December 10, 2002

MID-RIVERS TELEPHONE COOPERATIVE
SECTION 251(h) PETITION, TERRY, MT
WC DOC. NO. 02-78

Filed: February 15, 2002
Public Notice: April 19, 2002
Comments/Replies Complete: May 15, 2002

Summary:

Mid-Rivers provides ILEC and CLEC service in eastern Montana. Mid-Rivers initiated CLEC service in Terry in 1997 by constructing new outside plant, and offers a combination of modem, reliable services including DSL, Internet, ITV to the school and CLASS, together with a local presence. Ninety percent of the subscribers converted to Mid-Rivers in the first year. Approximately 97% of the 317 residence lines and 118 business lines in Terry are Mid-Rivers subscribers. Mid-Rivers has been designated an ETC in Terry. Mid-Rivers was able to obtain almost the entire subscriber base because of the superiority of its service compared to Qwest, which has long relegated Terry and other rural areas to telecommunications backwaters.

Mid-Rivers should be designated the ILEC for Terry because it meets the requirements of Section 251(h)(2):

- (a) It has a comparable position in the area to the ILEC
- (b) It has substantially replaced the ILEC
- (c) Treatment of Mid-Rivers as the ILEC is consistent with the public interest, convenience and necessity and the purposes of Section 251.

Record:

Comments in support of Mid-Rivers' Petition were filed by **Rural** Independent Competitive Alliance ("RICA"), the National Telecommunications Cooperative Association ("NTCA") and John Staurulakis, Inc. ("JSI"). **An** opposition **was** filed by Western Wireless Corporation. After close of the comment period, Qwest filed its comments as an *ex parte* letter seeking to delay Commission action by proposing that the Commission first conduct a Notice of Inquiry before acting on Mid-Rivers' Petition.

Issues:

- (a) ***Study Area Waiver.*** Western Wireless and Qwest oppose the petition and claim to be concerned that if, after grant of the petition, the Commission also allows Mid-Rivers to include Terry in its study area, then any subsequent competitive carrier seeking ETC designation in Terry would be required to serve the entire Mid-Rivers study area and would be required to make a public interest showing. In addition, the opponents

claim there could then be changes in the form of rate regulation and USF support. Qwest asserts Mid-Rivers should continue to receive the same support as Qwest.

Issues regarding the implications of a study area waiver are premature at best. There are no pending ETC requests for Terry by Western Wireless or any other carrier. Although Mid-Rivers intends to apply for a study area waiver upon grant of this petition, the petition is not contingent upon grant of such a waiver and all interested parties will have the opportunity to raise any relevant comments in the waiver proceeding. Any other ETC applicant will have the right to request that a different service area be designated.

Mid-Rivers believes, however, that the current rules specifying that all ETCs receive the same per line USF support are seriously flawed from a public policy perspective and are not competitively neutral. Because all ETCs are not similarly situated, the current rules result in support that is not sufficient for some ETCs, and a windfall for others. Both results are in conflict with the Act. The current reexamination of the "portability" rules should not delay action on Mid-River's petition because Mid-Rivers' request for ILEC designation is not conditioned upon any subsequent Commission action.

- (b) *Section 251(f) Exemption.* Western Wireless and Qwest also object that grant of ILEC status to Mid-Rivers in Terry would allow Mid-Rivers to assert its Section 251(f) exemption from the requirements of Section 251(c).

The rural exemption issue can and should be addressed in accordance with the relevant provisions of Section 251(f)(1)(B) if, and when, a competitor seeks such an interconnection. There are currently no such requests. Congress contemplated that some CLECs would supplant the incumbent and become ILECs, without any indication that such new ILECs should not be permitted if they would meet the definition of a rural telephone company.

- (c) *Area of Designation.* Qwest asserts that before acting on Mid-Rivers' petition, the Commission must decide whether the statute allows Mid-Rivers to be designated as the ILEC in Terry alone, or throughout the area in which it is designated a competitive ETC.

This issue borders on the frivolous. There is no basis in the statute **for this** assertion, nor any basis in fact. Consideration of this question would unnecessarily delay action on Mid-Rivers' petition. The prerequisites for ILEC status include substantial replacement; ETC status requires only holding out to provide the supported services,

- (d) *Status of Qwest after designation of Mid-Rivers.* Qwest claims that before it acts on Mid-Rivers' petition, the Commission must resolve the question of whether Qwest would remain **an** ILEC if the petition is granted.

There is no reason *to* conduct a separate proceeding and delay action on Mid-Rivers' petition. If the Commission determines that Qwest's status in Terry changes as a result of grant of the petition, it can so state in its decision. The Act provides Qwest **an** opportunity to withdraw its ETC status from Terry, to which Mid-Rivers would not object, and would consider purchase of Qwest's facilities

Conclusion

Mid-Rivers requests that the Commission act promptly on its petition consistent with the intent of Congress for situations in which the incumbent carrier is supplanted **by** a new entrant.